RECORD AND BRIEFS

Supreme Court, U.S.
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No. 16-466

IN THE

Supreme Court of the United States

BRISTOL-MYERS SQUIBB COMPANY,

Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO, *et al.*

Respondents.

On Petition for a Writ of Certiorari to the California Supreme Court

BRIEF OF WASHINGTON LEGAL FOUNDATION AND ALLIED EDUCATIONAL FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

The Due Process Clause permits a state court to exercise specific jurisdiction over a defendant only when the plaintiff's claims "arise out of or relate to" the defendant's forum activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (citation omitted). The question presented is:

Whether a plaintiff's claims arise out of or relate to a defendant's forum activities when there is no causal link between the defendant's forum contacts and the plaintiff's claims—that is, where the plaintiff's claims would be exactly the same even if the defendant had no forum contacts.

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INTERESTS OF *AMICI CURIAE*

Washington Legal Foundation (WLF) is a non-profit public-interest law firm and policy center with supporters in all 50 states.[1] WLF devotes a substantial portion of its resources to defending free enterprise, individual rights, a limited and accountable government, and the rule of law.

To that end, WLF has appeared frequently in this and other federal courts in cases involving personal jurisdiction issues, to support defendants seeking to avoid being subject to a court's coercive powers when assertion of jurisdiction does not comply with traditional notions of fair play and substantial justice. *See, e.g., BNSF Railway Co. v. Tyrrell*, No 16-405 (U.S., petition docketed, Sept. 28, 2016); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011); *Novo Nordisk A/S v. Lukas-Werner, cert. denied*, 134 S. Ct. 423 (2013). WLF also filed a brief in support of Petitioner when this case was before the California Supreme Court.

The Allied Educational Foundation (AEF) is a nonprofit charitable and educational foundation based in Tenafly, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study, such as law and public policy, and has appeared

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[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for a party authored this brief in whole or in part; and that no person or entity, other than *amici* and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. More than 10 days prior to the due date, counsel for *amici* provided counsel for Respondents with notice of their intent to file. All parties have consented to the filing; letters of consent have been lodged with the Court.

as *amicus curiae* in this Court on a number of occasions.

In its seminal decision in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), the Court made clear that the courts of a State lack personal jurisdiction over a corporate defendant unless its activities within the State give rise to the claims being asserted or unless the corporation is "at home" within the forum State. *Daimler* further clarified that a corporation, even one that conducts substantial business in all 50 States, should be deemed "at home" in no more than one or two of the States. *Amici* are concerned that the rationale of the California Supreme Court, unless overturned by this Court, would essentially negate *Daimler* as an effective check on state court jurisdiction over out-of-state corporate defendants. *Amici* are further concerned that the decision below deprives businesses of adequate means to structure their conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.

STATEMENT OF THE CASE

Like many corporations that sell products nationwide, Petitioner Bristol-Myers Squibb Co. ("BMS") sells a large number of products in California. For example, BMS's Plavix sales in California between 2006 and 2012 totaled nearly $1 billion. This case addresses whether those substantial sales are sufficient to justify California's exercise of jurisdiction over claims filed by nonresidents who allege that their purchase and use of Plavix—and their alleged injury from such use—all occurred outside California.

A State's exercise of personal jurisdiction over a corporation based on business activity within the State that is not directly related to events giving rise to the litigation is often referred to as an exercise of "general jurisdiction." *Daimler* made clear that a State may not exercise general jurisdiction over a corporation when, as here, the corporation is neither incorporated in nor has its principal place of business within the State, even when the corporation has substantial sales within the State. This case addresses whether nonresidents may nonetheless invoke the California courts' personal jurisdiction over such a corporation by citing those very same substantial sales as the basis for "specific jurisdiction."

These products liability actions involve allegations that consumers from across the nation suffered injuries after taking Plavix, a drug approved by the Food and Drug Administration (FDA) for use in preventing dangerous blood clots. A total of 661 plaintiffs—86 California residents and 575 nonresidents—joined together to file eight separate complaints against BMS in March 2012 in San Francisco Superior Court.[2] The 575 nonresident plaintiffs claim no contacts with BMS's California activities or with California generally. Moreover, although BMS derives substantial revenue from

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[2] The decision by plaintiffs' lawyers to file eight separate complaints (each with fewer than 100 plaintiffs) was not coincidental. Had any of the complaints included 100 or more plaintiffs, BMS's right to remove that complaint to federal court under the Class Action Fairness Act (CAFA) would have been beyond question. *See* 28 U.S.C. § 1332(d)(11)(B)(i) (authorizing removal of a "mass action" in which the monetary claims of "100 or more persons are proposed to be tried jointly.").

California sales, those sales represent but a small fraction of BMS's overall sales, and California is not the State in which BMS is incorporated (Delaware), not the State in which it maintains its principal place of business (New York), and not even one of the States in which Plavix is manufactured.

The California Supreme Court nonetheless held that California could maintain personal jurisdiction over BMS with respect to the claims not only of the 86 California residents (an issue that BMS does not contest) but also with respect to the 575 nonresident plaintiffs (the "Respondents").

When the case first came before the California Court of Appeal, it summarily denied BMS's writ petition (seeking review of the superior court's conclusion that it could exercise general jurisdiction over BMS based on the company's substantial business activity in California). Following the 2014 *Daimler* decision, the California Supreme Court directed the appeals court to address the merits of BMS's petition. It did so, and concluded that although *Daimler* precluded assertion of *general* jurisdiction over BMS with respect to the claims of the nonresident defendants, California courts could still assert *specific* jurisdiction over BMS. Pet. App. 91a-146a.

A sharply divided California Supreme Court affirmed. Pet. App. 1a-90a. The four-justice majority recognized that the Due Process Clause bars California courts from exercising specific jurisdiction over BMS unless Respondents can demonstrate that their claims "arise out of or are related to [BMS's] forum-related activities." Pet. App. 20a-21a. While it did not assert

that the claims of Respondents "arise out of" any of BMS's California-based activities, the majority concluded that BMS's activities were sufficiently "related to" those claims to warrant the exercise of personal jurisdiction. *Id.* at 25a-35a.

The majority held that, in order to satisfy the "related to" requirement, "the defendant's activities in the forum state need not be either the proximate cause or the 'but for' cause of the plaintiff's injuries." *Id.* at 22a. Instead, in accord with prior California Supreme Court case law, the majority held that it is sufficient to demonstrate "a substantial nexus or connection between the defendant's forum activities and the plaintiff's claims." *Id.* at 21a. It elaborated:

> Under the substantial connection test, the intensity of forum contacts and the connection of the claim to those contacts are inversely related. The more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim. Thus, a claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction. Indeed, only when the operative facts of the controversy are not related to the defendant's contact with the state can it be said that the cause of action does not arise from that contact.

Id. at 22a (citations omitted).

The majority acknowledged that Respondents were not injured by Plavix in California, were not

treated in California, were not prescribed Plavix by California doctors, and did not have their prescriptions filled by California pharmacists. It further acknowledged that BMS neither developed nor manufactured Plavix in California, and that the distribution chain for the Plavix supplied to Respondents did not pass through California. The majority based its "substantial connection" finding on evidence that BMS: (1) extensively marketed Plavix to California residents as part of a nationwide marketing program; (2) contracted with McKesson Corp. (a California corporation) to distribute Plavix and hired several hundred salespersons within the State; and (3) maintains facilities in California that conduct research and development of other BMS products (but not Plavix). *Id.* at 32a.

Justice Werdegar, joined by Justices Chin and Corrigan, dissented. Pet. App. 46a-87a. He concluded, "*[T]he record contains no evidence connecting the Plavix taken by any of the nonresident plaintiffs to California.*" *Id.* at 47a (emphasis in original). He argued that the majority's conclusion that California could exercise jurisdiction over BMS in connection with Respondents' claims was based on a specific-jurisdiction standard that conflicts with the standard adopted by this Court and numerous other appellate courts. *Id.* at 51a-77a. He warned that the decision interferes with rational business planning by undermining the ability of businesses to predict the types of litigation to which they expose themselves when they decide to undertake activities within a State. *Id.* at 79a-80a.

SUMMARY OF ARGUMENT

The petition raises an issue of exceptional importance. As this Court has repeatedly reminded, the Fourteenth Amendment's Due Process Clause imposes strict limits on the authority of a state court to exercise personal jurisdiction over out-of-state defendants. *See, e.g., J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011) (plurality) ("[T]hose who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter."). Those limitations serve both to protect litigants from inconvenient or distant litigation and to recognize limits on the sovereignty of each State with respect to affairs arising in other States. *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 293 (1980). The decision below threatens to obliterate those limitations by subjecting out-of-state defendants to the jurisdiction of California courts based on activities lacking any connection to California.

As Petitioner has demonstrated, review is warranted to resolve the direct and long-standing conflict—between the California Supreme Court and numerous federal appeals courts as well as other state supreme courts—regarding the scope of specific jurisdiction. In adhering to its "substantial nexus or connection" test, the court below explicitly disclaimed any requirement that the defendant's activities in the forum State be the "proximate" cause, or even the "but for" cause, of the plaintiffs' injuries. Pet. App. 22a. That holding directly conflicts with the numerous appellate decisions, cited in the petition, that have concluded that a plaintiff's claims do not "arise out of or relate to" the defendant's forum activities unless

those forum activities are at least a "but for" cause of the alleged injuries.

Amici will not repeat those citations here. It suffices to say that WLF fully agrees with BMS's contention that review is warranted to resolve the conflict between the California Supreme Court and numerous other appellate courts regarding when the plaintiff's claims can be said to "arise out of or relate to" the defendant's forum activities. *Amici* write separately to focus on two other points.

First, review is also warranted to resolve the substantial conflict between the decision below and this Court's personal-jurisdiction decisions. The Court's decisions have never suggested that specific jurisdiction is appropriate when, as here, the only relationship between the plaintiffs' claims and the defendant's forum activities is a similarity of subject matter, and when none of those forum activities played any role in bringing about the plaintiffs' alleged injuries. As the Court stated categorically in a recent specific-jurisdiction case, for a court to exercise personal jurisdiction consistent with due process, "the defendant's *suit-related conduct* must create a substantial connection with the forum State." *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (emphasis added). Respondents have not pointed to any "suit-related conduct" by BMS that is connected to California. Indeed, if the conduct to which Respondents point—principally, BMS's substantial general business activity within California—suffices to create specific jurisdiction with respect to their claims, then the due-process limitations imposed by *Daimler* on the scope of general jurisdiction will be rendered a dead letter.

Second, review is warranted because the petition provides an exceptionally good vehicle for resolving the personal-jurisdiction issue over which the lower courts are so sharply conflicted. The facts of this case are largely uncontested. The only dispute involves what due-process test should be applied to the undisputed facts. The California Supreme Court has expressly disavowed adoption of a proximate-cause or "but for" cause standard, in sharp contrast to the many appeals courts that have held that specific jurisdiction is unwarranted unless one or both of those standards are satisfied. And that conflict is outcome-determinative; *amici* do not understand Respondents to be arguing that BMS's California-based activities are even a "but for" cause of their injuries.

The important role played by California in the national economy also makes this an ideal vehicle for resolving the conflict among lower-court decisions. Given the size of the California market, any company that aspires to conduct business on a nationwide basis has no choice but to conduct business in California. Yet, California courts have become a particularly attractive destination for forum-shopping plaintiffs' lawyers in search of courts thought to exhibit a pro-plaintiff bias. Granting review in this case will resolve the conflict in the context of a jurisdiction that plays an increasing and outsized role in resolving disputes between consumers and product manufacturers.

While the conflict among the lower courts regarding when a plaintiff's claims "arise out of or relate to" the defendant's forum activities has festered for decades, it has come more sharply into focus following the 2014 *Daimler* decision. Before *Daimler*,

many lower courts asserted *general* jurisdiction over out-of-state companies based on a finding that the company engaged in a substantial, continuous, and systematic course of business within the forum State. As the court below recognized, *Daimler* held that such assertions of general jurisdiction are "unacceptably grasping" and are inconsistent with due process principles. Pet. App. 15a (citing *Daimler*, 134 S. Ct. at 761). As a result, lower courts have been forced to grapple with increasing frequency with claims that a defendant's substantial forum contacts are nonetheless sufficient to justify assertion of jurisdiction over an out-of-state defendant based on a *specific*-jurisdiction theory. Review is warranted to provide the lower courts with desperately needed guidance regarding how to resolve such claims.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S SPECIFIC-JURISDICTION DECISIONS

As this Court has long recognized, the Due Process Clause of the Fourteenth Amendment limits the authority of state courts to exercise personal jurisdiction over nonresident defendants that do not voluntarily consent to jurisdiction. *See, e.g.*, *J. McIntyre Machinery*, 564 U.S. at 881 (plurality) ("[T]hose who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter."). A state court may exercise personal jurisdiction over a nonresident defendant only if there exist "minimum contacts" among the defendant, the litigation, and the

forum state. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The "minimum contacts" requirement serves two important functions: it protects the defendant from being required to defend a lawsuit in an inconvenient forum and it "acts to ensure that the States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen*, 444 U.S. at 292.

The Court has consistently held that a state court may not exercise personal jurisdiction over an out-of-state defendant simply because the defendant has engaged in continuous and systematic activities within the State. Rather, personal jurisdiction also requires a showing that the defendant's activities are sufficiently connected to the claim. *See, e.g.*, *Daimler*, 134 S. Ct. at 757 ("a corporation's 'continuous activity of some sort within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity'") (quoting *Int'l Shoe*, 326 U.S. at 318); *Shaffer*, 433 U.S. at 204 ("the central concern of the inquiry into personal jurisdiction" is "the relationship among the defendant, the forum, *and the litigation*") (emphasis added). As *Daimler* explained, personal jurisdiction may not be exercised over nonresident defendants based on claims "having nothing to do with anything that occurred or had its principal impact in" the forum state. *Daimler*, 134 S. Ct. at 762.

A defendant is generally required to answer any and all claims asserted in its "home" jurisdiction, even if the claim bears no relationship to the jurisdiction.

The Court refers to an assertion of personal jurisdiction where the defendant is "at home" as an exercise of "general jurisdiction." *Goodyear*, 564 U.S. at 919. *Daimler* made plain, however, that an assertion of general jurisdiction over a corporation can be sustained in only two places: the State in which a corporation maintains its principal place of business and the State of incorporation. 134 S. Ct. at 760. In *Daimler*, the Court rejected the plaintiffs' request that it approve "the exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business," characterizing the plaintiffs' proposed formulation as "too grasping." *Id.* at 761.

It is undisputed that BMS is not subject to general jurisdiction in California. It is not incorporated in California, nor does it maintain its principal place of business in the State. Thus, for the California courts to properly exercise personal jurisdiction over BMS with respect to each of the tort claims asserted by Respondents, it must do so on the basis of "specific jurisdiction"—that is, a showing that each claim "arises out of or relates to the defendant's contacts with the forum." *Id.* at 754.

A. The Court's Case Law Establishes that Respondents' Claims Do Not Arise out of or Relate to BMS's Contacts with California

In concluding that Respondents' claims "arise out of or relate to" BMS's contacts with California, the California Supreme Court principally relied on

evidence that BMS markets Plavix on a nationwide basis and that its California marketing efforts are similar to the allegedly misleading Plavix marketing efforts undertaken by BMS in each of Respondents' home States. Pet. App. 28a. The court concluded that Respondents' claims:

> [A]re based on the same allegedly defective product and the assertedly misleading marketing and promotion of that product [as asserted by other, California-based plaintiffs], which allegedly caused injuries in and outside the state. Thus, the nonresident plaintiffs' claims bear a substantial connection with BMS's contacts in California.

Ibid.

In other words, as far as the California Supreme Court is concerned, the requisite minimum contacts among BMS, the forum, and the litigation can be established even when, as here, "the nonresident plaintiffs' claims would be exactly the same if BMS had no contact whatever with California." *Id.* at 29a. The court rejected BMS's argument that the existence of a nationwide Plavix marketing campaign was insufficient "to establish relatedness for purposes of minimum contacts," stating that that argument "rest[ed] on the invalid assumption that BMS's forum contacts must bear some substantive legal relevance to the nonresident plaintiffs' claims." *Id.* at 30a.

Yet, the assumption that the court deemed "invalid"—that the defendant's forum contacts must

"bear some legal relevance" to the plaintiffs' claims in order to satisfy the "arise out of or relate to" requirement—is an assumption that has underpinned every one of this Court's specific-jurisdiction decisions.

Thus, for example, in determining whether California courts could exercise specific jurisdiction over Florida residents in connection with a libel claim asserted by a California resident, the Court focused its inquiry solely on forum contacts that were legally relevant to the libel claim. *Calder v. Jones*, 465 U.S. 783 (1984). The defendants were the writer and editor of an article that was widely circulated by the *National Enquirer* in California. Although the defendants were responsible for numerous other articles that were circulated in California, the only forum contacts upon which the Court relied were those related to the article that allegedly defamed the plaintiff: "petitioners are primary participants in an alleged wrongdoing intentionally directed at a California resident, and jurisdiction over them is proper on that basis." *Id.* at 790. But under the California Supreme Court's expansive understanding of specific jurisdiction, the defendants' authorship of articles directed at *other* California residents would have been sufficient by itself to satisfy minimum-contact requirements.

Similarly, in *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1984), the Court determined that the defendant's numerous contacts with the forum State (Texas) were insufficient to permit Texas to exercise personal jurisdiction because those contacts did not arise out of or relate to the plaintiffs' claims (which involved injuries arising from

a helicopter crash in Peru). Yet the decision almost surely would have come out the other way under the specific-jurisdiction standard adopted by the California Supreme Court.

Although the ill-fated helicopter services were not provided in Texas, the defendant engaged in numerous helicopter-related activities within the State, including: (1) purchase of its helicopters and spare parts within Texas; (2) sending its pilots to Texas for flight training; (3) regularly sending employees to Texas to consult with the helicopter manufacturer; (4) sending its chief executive officer to Houston to negotiate the helicopter service contract with the plaintiffs' employer; and (5) accepting checks written by the Texas-based employer and drawn on a Texas bank. None of those Texas-based activities had any "legal relevance" to the plaintiffs' claims that the defendant operated its helicopter in a negligent manner. But because the California Supreme Court does not deem "legal relevance" a prerequisite for establishing specific jurisdiction under its "significant nexus or connection" test, those numerous forum contacts (all of which related to the defendant's helicopter operations) seemingly would have been more than sufficient for the California Supreme Court to uphold personal jurisdiction.

Most recently, the Court held that a Nevada court lacked specific jurisdiction over claims against a DEA agent arising from his seizure of cash at the Atlanta airport from a Nevada resident about to board a flight home to Nevada. *Walden v. Fiore*, 134 S. Ct. 1115 (2014). The Court conceded that the injury

caused by the defendant's allegedly tortious conduct occurred in Nevada by virtue of the plaintiff's Nevada residency and that the defendant was well aware of the plaintiff's residency. *Id.* at 1125. But the Court concluded that that evidence was insufficient to establish that the plaintiff's claims "arose out of or were related to" relevant forum contacts. It explained that "[f]or a State to exercise jurisdiction consistent with due process," it is the defendant's "suit-related conduct" that must create a "substantial connection" with the forum State, *id.* at 1121, and the happenstance of the plaintiff's residency was unrelated to the defendant's allegedly tortious conduct in Atlanta. In other words, it made no difference whether the DEA agent might have had numerous other connections with Nevada that were not "suit related." In the absence of evidence that *the defendant's conduct toward the plaintiff and his claim* had some connection with Nevada, the Due Process Clause prohibited a Nevada court from exercising personal jurisdiction. The decision below, which based a finding of specific jurisdiction on BMS forum contacts that were not "suit related," cannot be reconciled with *Walden*.

As Justice Werdegar explained in dissent:

> Of the post-*International Shoe* decisions in which the high court actually found a factual basis for specific jurisdiction, each featured a direct link between forum activities and the litigation. (See *Burger King Corp. v. Rudzewicz*, (1985) 471 U.S. 462, 479-80 [specific jurisdiction in Florida courts proper where franchise dispute "grew directly out of" contract formed between

> Florida franchisor and Michigan franchisee, whose breach caused "caused foreseeable injuries to the corporation in Florida."])

Pet. App. 53a-54a.

In rejecting BMS's argument that California courts lack personal jurisdiction to adjudicate claims against BMS brought by "nonresident plaintiffs [who] have no connection to and did not suffer any Plavix-related injuries in the state," the California Supreme Court relied on this Court's decision in *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984). Pet. App. 33a-34a. It asserted, "As the high court explicitly declared in *Keeton*, a 'plaintiff's residence in the forum State is not a separate requirement, and lack of residence will not defeat jurisdiction established on the basis of the defendant's contacts.'" *Id.* at 34a (quoting *Keeton*, 465 U.S. at 780). The court badly misconstrued *Keeton*. Although the plaintiff in that case did not reside in the forum State (New Hampshire), she suffered injuries there. The defendant's allegedly libelous publication was widely circulated in New Hampshire, causing injury to the plaintiff's reputation within the State. Indeed, *Keeton*'s heavy reliance on the defendant's litigation-related contacts with New Hampshire in upholding the exercise of personal jurisdiction by the New Hampshire court directly undercuts the California Supreme Court's position. *Keeton* quite clearly does not support the claim that exercise of specific jurisdiction is proper even though Respondents "did not suffer any Plavix-related injuries in the State." *Id.* at 33a-34a.

Particularly troubling is the California Supreme Court's reliance on the fact that "BMS maintains research and laboratory facilities in California, and it presumably enjoys the protection of our laws related to those activities." Pet. App. 29a. Even though the court conceded that none of those facilities has ever conducted any research regarding Plavix, it concluded that the existence of those facilities "provides an additional connection between the nonresident plaintiffs' claims and the company's activities in California." *Ibid.* The Court justified that "substantial nexus and connection" finding on the fact that the complaint includes claims that *other* BMS research facilities located in *other* States were responsible for the allegedly negligent development and design of Plavix. That justification—which is based on nothing more than a similarity of function between the California-based facilities and the non-California BMS facilities responsible for BMS's allegedly tortious conduct—well illustrates the essentially limitless nature of California's assertion of personal jurisdiction over nonresident companies that conduct business within the State. Review is warranted to resolve the conflict between the decision below and this Court's specific jurisdiction case law.

B. The California Supreme Court's Expansive Definition of Specific Jurisdiction Ignores *Daimler*'s Admonition to Keep Rules Governing Jurisdiction Simple in Order to Promote Greater Predictability

The Court explained in *Daimler* that it adopted its rule governing general jurisdiction over corporations in part because of its simplicity. Ascertaining a corporation's principal place of business and its place of incorporation—the attributes that *Daimler* held are determinative in assessing where a corporation is "at home"—is a relatively straightforward exercise:

> Those affiliations have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable. Cf. *Hertz Corp. v. Fried*, 559 U.S. 77, 94 (2010) ("Simple jurisdictional rules . . . promote greater predictability."). These bases afford plaintiffs at least one clear and certain forum in which a corporate defendant may be sued on any and all claims.

Daimler, 134 S. Ct. at 760.

By upholding personal jurisdiction under its expansive definition of specific jurisdiction, the California Supreme Court has adopted a jurisdictional rule that is anything but simple. Among other things, the court's "substantial nexus or connection test" establishes a sliding scale, under which a showing that

the defendant has numerous forum contacts (regardless whether they are litigation-related) reduces the required showing of connection between those contacts and the plaintiffs' claim. Pet. App. 22a. But the unspecified degree of reduction is left to be resolved by California courts on a case-by-case basis. *Id.* at 35.

As a result, out-of-state corporations are left with little guidance regarding what activity in California will render them subject to the jurisdiction of California courts for claims arising outside the State. That result is inconsistent with *Daimler*'s goal of predictability and warrants review by this Court.

The court below did not dispute the highly attenuated nature of the relationship between California and the Respondents' claims. It nonetheless concluded that California courts could exercise specific jurisdiction over Respondents' claims based on a smorgasbord of BMS forum contacts. At no point did it specify which of those contacts, by themselves, would be sufficient to establish personal jurisdiction. Indeed, although the court noted that some Plavix-based products-liability claims have been filed by California residents against BMS based on theories similar to those raised by Respondents, the court never specified whether the existence of such claims was crucial to its personal-jurisdiction finding.

A rule so amorphous provides corporations with no guidance whatsoever. The California Supreme Court insists that the Respondents' claims "arise out of or are connected with" BMS's contacts, but nonresident defendants are left to wonder precisely what that

connection consists of. One plausible interpretation: manufacturers that market their products on a nationwide basis are subject to suit in each of the 50 States with respect to *any* claim arising out of the sale of their products. BMS is hardly unique among manufacturers in distributing its products pursuant to a nationwide distribution and marketing plan. But if that is the California Supreme Court's rule, little is left of *Daimler*; the court will simply have substituted a new name (specific jurisdiction) for the exorbitant understanding of general jurisdiction rejected by *Daimler* as too grasping.

As *Daimler* explained in rejecting the Ninth Circuit's expansive understanding of personal jurisdiction over nonresident defendants based on claims arising outside the forum, "Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants 'to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'" *Daimler*, 134 S. Ct. at 761-62 (quoting *Burger King Corp. v. Rudzewicz* 471 U.S. 462, 472 (1985)).

The court below dismissed those concerns, asserting that BMS "embraced th[e] risk" of being sued in California by nonresident plaintiffs when it decided to include California within its nationwide Plavix sales efforts. Pet. App. 33a. But it is unrealistic to expect large manufacturers to exclude California from their marketing efforts. More importantly, the court's rationale is inconsistent with *Daimler*'s condemnation of "exorbitant exercises of all-purpose jurisdiction" by California courts based merely on evidence that the

defendant engaged in continuous and systematic business activity within the State. Review is warranted to provide companies with clearer guidance regarding what greater extent of forum contacts, beyond simply conducting business on a continuous and systematic basis, is sufficient to expose them to the specific jurisdiction of forum courts.

II. THE PETITION IS AN EXCELLENT VEHICLE FOR RESOLVING THE CONFLICT AMONG THE LOWER COURTS

Review is also warranted because the petition provides an exceptionally good vehicle for resolving the personal-jurisdiction issue over which the lower courts are so sharply conflicted. Indeed, the California Supreme Court expressly recognized that the case turns solely on issues of law. It stated:

> [T]here appears to be no material factual conflicts nor any dispute over any factual findings in the superior court. We, therefore, consider the possible exercise of each type of jurisdiction as a matter of law and on the undisputed facts.

Pet. App. 8a-9a. Accordingly, there is no danger that a disputed factual record could muddle efforts by the Court to announce a clear rule governing due-process limits on a state court's exercise of specific jurisdiction.

It is undisputed that BMS properly raised its due-process objection to personal jurisdiction at all stages of the litigation. The superior court, the appeals

court, and the California Supreme Court each addressed the merits of that objection.

Moreover, the split between the California Supreme Court and other appellate courts that have adopted a more restrictive view of specific jurisdiction is outcome-determinative. The courts below did not assert that any of BMS's California activity was the proximate cause, or even a but-for cause, of Respondents' injuries. Indeed, the California Supreme Court expressly held that "the defendant's activities in the forum state need not be either the proximate cause or the 'but for' cause of the plaintiff's injuries" to warrant an exercise of specific jurisdiction. Pet. App. 22a. Accordingly, there can be no dispute that were this case to come before one of the many federal appeals courts and state supreme courts that impose either a proximate cause or a "but for" cause requirement, Respondents' claims would have been dismissed for lack of personal jurisdiction.

Indeed, the California Supreme Court implicitly recognized the conflict between its decision and the appellate decisions relied on by BMS. BMS's California brief cited *Glater v. Eli Lilly & Co.*, 744 F.2d 213 (1st Cir. 1984), as an example of a case in which an appellate court determined that products-liability claims filed by nonresident plaintiffs against a nonresident drug company should not be deemed to "arise out of or relate to" the defendant's forum activities because the plaintiffs had not established a causal relationship between the forum activities and the plaintiffs' injuries. The court did not challenge BMS's characterization of the First Circuit's holding.

Instead, its principal response was that *Glater* was issued before *Vons Companies v. Seabest Foods, Inc.*, 14 Cal. 4th 434 (1996), the decision in which the California Supreme Court first announced its "substantial nexus or connection" test, and thus that the First Circuit did not "ha[ve] the benefit of our reasoning in *Vons*" when it ruled. Pet. App. 32a. By expressing a hope that the First Circuit would have ruled differently had it had access to *Vons*, the California court tacitly conceded that its "substantial nexus or connection" standard directly conflicts with the First Circuit's proximate-cause standard.

Review is particularly warranted in light of the important role played by California in the national economy. The State's population now exceeds 39 million, and a significant portion of all consumer goods sold in the United States are sold there. As Justice Werdegar noted, any company that sells its products on a nationwide basis will face considerable competitive pressure to market its products in California. Pet. App. 84a. Yet, the California Supreme Court has now warned all such companies in essence that if they market their goods in California, they can be haled into California courts to answer claims arising from product sales in any of the 50 States. Because California's immense size means that the decision below is likely to have a significant impact on commerce nationwide, the Court should grant review to determine whether this new litigation burden is constitutionally permissible.

Review is also warranted because the decision below threatens to place California courts in the role of adjudicating disputes that arose in other States and

thereby threatens to interfere with the interests of those other States in adjudicating disputes arising within their borders. As the Court explained in *World-Wide Volkswagen*, the "minimum contacts" limitation on personal jurisdiction also "acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system. ... [W]e have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution." *World-Wide Volkswagen*, 444 U.S. at 292-93. By granting review, the Court can ensure that California does not encroach on the sovereign rights of other States.

Finally, further delay is unwarranted in resolving conflicting lower-court decisions regarding when a plaintiff's claims "arise out of or relate to" the defendant's forum activities. *Daimler* imposed strict due-process limits on state-court exercise of general jurisdiction, thereby causing plaintiffs' attorneys to shift gears and cite specific jurisdiction as the basis of their overbroad jurisdictional claims. Indeed, *Daimler* has been cited more than 1,000 times in federal and state-appellate court decisions issued in the past two years—usually in connection with specific-jurisdiction claims. Given the large number of cases coming before the lower courts on a regular basis which call for a decision on specific-jurisdiction issues, early resolution of the conflict identified by the petition would provide valuable guidance to those courts.

CONCLUSION

The Court should grant the Petition.

Respectfully submitted,

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